

Hon. Richard Jones
Hon. James P. Donohue

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

KYLE LYDELL CANTY,

Plaintiff,

vs.

CITY OF SEATTLE, et al.,

Defendants.

NO. 2:16-CV-01655-RAJ-JPD

CITY OF SEATTLE DEFENDANTS'
RESPONSE TO PLAINTIFF'S
EMERGENCY MOTION PURSUANT TO
42 U.S.C. 1997(d) PROHIBITION OF
RETALIATION

NOTED FOR SEPTEMBER 15, 2017

I. RELIEF REQUESTED

Defendants City of Seattle, Officer Marshall Coolidge, Sean Culbertson, Timothy Renihan and Officer Hancock (City of Seattle Defendants) request the Court deny Plaintiff's Motion and Declaration of Defendants Motive and Retaliation for failure to comply with Fed. R. Civ. P. 7(b)(1). Additionally, the City of Seattle Defendants join in the response in opposition to Plaintiff's motion filed by King County. Dkt. 106.

II. FACTS RELEVANT TO MOTION

Plaintiff originally filed his 42 U.S.C. § 1983 Prisoner Civil Rights Complaint naming the City of Seattle and the Seattle Police Department as defendants on November 5, 2016. Dkt. 5. Plaintiff eventually filed a Second Amended Civil Rights Complaint naming the City of Seattle and individual officers Coolidge, Culbertson, Renihan, and Hancock on June 1,

1 2017. Dkt. 38. Plaintiff's Complaint alleges the City of Seattle Defendants violated his rights
 2 under the Fourth, Fifth, and Eighth Amendments to the United States Constitution during his
 3 detention on a civil commitment warrant. *Id.*

4 Among the numerous motions Plaintiff has filed since commencing this action, on July
 5 10, 2017 he filed a motion entitled, "motion and declaration of defendants [sic] retaliation."
 6 Dkt. 53. On August 7, 2017, the court denied the motion, stating "nowhere in this motion does
 7 plaintiff identify what relief he is seeking . . ." Dkt. 81. Plaintiff never sought reconsideration
 8 of this ruling. Plaintiff has now filed another similarly labeled motion, "emergency motion
 9 pursuant to 42 U.S.C. 1997(d) prohibition of retaliation." Dkt. 102. Other than the cover page
 10 with the case caption, the motion appears to consist exclusively of a copy of a transcript from
 11 one of Plaintiff's criminal matters in King County Superior Court. *Id.*

12 III. ARGUMENT

13 **Plaintiff's Motion Should Be Denied Because It Does Not State Any Particular** 14 **Grounds For Seeking An Order, Or What Relief Is Sought**

15 The Rules of Civil Procedure require that requests for court orders be made by motion.
 16 Fed. R. Civ. P. 7(b)(1). Motions must: 1) be in writing; 2) state with particularity the ground
 17 for seeking the order; and 3) state the relief sought. *Id.* Courts have generally given liberal
 18 interpretation to Rule 7(b)'s requirement that motions "state with particularity the grounds
 19 therefor." *Harkins v. Ford Motor Co.*, 437 F.2d 276 n.1 (3d Cir. Pa. 1970). However, Rule
 20 7(b)'s requirement that moving party state with particularity grounds for his motion is not
 21 intended to be merely a matter of form but real and substantial. *Steingut v. National City Bank*,
 22 36 F. Supp. 486, 487 (D.N.Y. 1941). "[M]otions giving no reasons have no effect" and should
 23 be denied. *Stephenson v. Deutsche Bank AG*, 282 F. Supp. 2d 1032, 1041 n.7 (D. Minn. 2003),
 24 quoting *Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin*, 957 F.2d
 25 515, 516 (7th Cir. 1992). Courts have usually interpreted Fed. R. Civ. P. 7(b) strictly, refusing
 26

1 to recognize requests for relief not specified in the moving papers. *De Lorenzo v. Fed. Deposit*
 2 *Ins. Corp.*, 268 F. Supp. 378, 381 (S.D.N.Y. 1967).

3 Plaintiff's "motion" again does not state what, if any, relief he is seeking by filing this
 4 document. Nor has he filed a proposed order with his motion as required by local rule that
 5 might enlighten the City of Seattle Defendants as to his motion's purpose. *See* W.D. Wash.
 6 LCR 7(b)(1). Plaintiff states no legal basis whatsoever for his motion, let alone the particular
 7 grounds required by Fed. R. Civ. P. 7(b) for filing a motion. The lack of grounds and request
 8 for relief are fatal to Plaintiff's motion and the Court should therefore deny it.

9 IV. CONCLUSION

10 Plaintiff's "emergency motion pursuant to 42 U.S.C. 1997(d) prohibition of retaliation"
 11 states no legal grounds for seeking an order, nor includes any request for relief as required by
 12 the Federal Civil Rules. The Court should therefore deny Plaintiff's motion.
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14 DATED this 11th day of September, 2017.

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16
17
18 s/ John R. Nicholson

19 JOHN R. NICHOLSON WSBA #30499

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 23 Officer Marshall Coolidge, Sean Culbertson,
 24 Timothy Renihan and Officer Hancock
 25
 26

CERTIFICATE OF SERVICE

I certify that on the 11th day of September, 2017, I electronically filed the foregoing documents with the Clerk of the Court using CM/ECF E-Filing Systems, and notifying of such filing to the following:

Pro se Plaintiff, Kyle Lydell Canty DOC #401358 Washington Corrections Center P.O. Box 900 Shelton, WA 98584 DOCWCCInmateFederal@DOC1.WA.GOV	(X) ECF Electronic Filing
Samantha D. Kanner, WSBA #36943 Deputy Prosecuting Attorney King County Prosecuting Attorney's Office 500 Fourth Avenue, 9 th Floor Seattle, WA 98104 (206) 296-8820 SamanthaKanner@kingcounty.gov Attorney for King County	(X) ECF Electronic Filing

I certify under the penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

DATED this 11th day of September, 2017, in Seattle, Washington.

s/Kathie Fudge
 KATHIE FUDGE, Legal Assistant
 kathief@fjtlaw.com